

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

JAMES EDWARD CROSS.

Petitioner,

Case No. 3:20-cv-00042-MMD-WGC

ORDER

RENEE BAKER, et al.,

Respondents.

12 Pro Se Petitioner James Edward Cross has filed an application to proceed *in forma*
13 *pauperis* (“IFP”), a motion for appointment of counsel, and a petition for writ of habeas
14 corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1.) This habeas matter comes before the
15 Court for initial review under the Rules Governing Section 2254 Cases. For the reasons
16 discussed below, the Court dismisses the petition for lack of jurisdiction, denies the IFP
17 application and motion to appoint counsel as moot, and directs the Clerk of Court to close
18 this case.

19 Petitioner challenges a 1998 conviction and sentence imposed by the Eighth
20 Judicial District Court for Clark County. *State of Nevada v. Cross*, Case No. 96-C-139330.¹
21 The Court takes judicial notice of the multiple habeas petitions Petitioner has filed in the
22 District of Nevada, including but not limited to: 2:06-cv-01297-JCM-RJJ, 3:08-cv-00403-
23 LRH-VPC, 3:12-cv-00651-MMD-WGC. In addition, the Court of Appeals for the Ninth
24 Circuit has denied at least two applications for authorization to file a second or successive
25 petition in Case Nos. 18-71775 and 19-72856.

²⁵ ¹The Court takes judicial notice of the online docket records of the Eighth Judicial
27 District Court and Nevada appellate courts. The docket records may be accessed by the
28 public online at: <https://www.clarkcountycourts.us/Anonymous/default.aspx> and
<http://caseinfo.nvscourt.us/public/caseSearch.do>.

1 The current petition is second or successive because a prior federal petition was
2 decided on its merits, Petitioner attacks the same judgment of conviction, and the claims
3 Petitioner raises here are based on facts that had occurred by the time of the prior petition.
4 See *Brown v. Muniz*, 889 F.3d 661, 667 (9th Cir. 2018) (“[A] federal habeas petition is
5 second or successive if the facts underlying the claim occurred by the time of the initial
6 petition, . . . and if the petition challenges the same state court judgment as the initial
7 petition.”). Under 28 U.S.C. § 2244(b)(3), before a second or successive petition is filed in
8 the federal district court, a petitioner must move in the court of appeals for an order
9 authorizing the district court to consider the petition. A federal district court does not have
10 jurisdiction to entertain a successive petition absent such permission. *Brown*, 889 F.3d at
11 667. Petitioner has made no allegation or showing that he has received authorization from
12 the Ninth Circuit to file this second or successive petition, nor do the records of the Ninth
13 Circuit reflect that he has received such authorization. This second or successive petition
14 must therefore be dismissed for lack of jurisdiction.

15 It is therefore ordered that this action is dismissed without prejudice for lack of
16 jurisdiction.

17 It is further ordered that Petitioner Cross’ IFP Application (ECF No. 1) and Motion
18 for Appointment of Counsel (ECF No. 1-2) are denied as moot.

19 It is further ordered that Petitioner Cross’ is denied a certificate of appealability, as
20 jurists of reason would not find the dismissal of the petition on jurisdictional grounds to be
21 debatable or wrong.

22 It is further ordered that pursuant to Rule 4 of the Rules Governing Section 2254
23 Cases, that the Clerk will make informal electronic service upon Respondents by adding
24 Nevada Attorney General Aaron D. Ford as counsel for Respondents and directing a
25 notice of electronic filing of this order to his office. No response is required from
26 Respondents other than to respond to any orders of a reviewing court.

27 It is further ordered that the Clerk of Court is directed to file the petition (ECF No.
28 1-1).

1 It is further ordered that the Clerk of Court is instructed to enter final judgment
2 accordingly, dismissing this action without prejudice, and close this case.

3 DATED THIS 8th day of May 2020.

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6 MIRANDA M. DU
7 CHIEF UNITED STATES DISTRICT JUDGE
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